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April 30, 1996

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW., Room 220  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

**Re: RM No. 8783**

Dear Mr. Caton:

Enclosed please find the original and 20 copies of the Comments of the National Association of Attorneys General Telecommunications Subcommittee to be filed in the above matter.

Thank you for your consideration.

Very truly yours,

Neil G. Fishman  
Assistant Attorney General

NGF:md  
Enc.

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RM NO. 8783

The Attorneys General welcome the Commission's request for comments regarding the Florida Public Service Commission's (FPSC) Petition. As the chief law enforcement officers of our respective states, we receive consumer complaints and are responsible for enforcing consumer protection laws. Similar to the FPSC's experience, we also continue to receive consumer complaints that exhibit unscrupulous pay-per-call practices resulting in exorbitant charges on consumers' phone bills.

## **PAY-PER-CALL FRAUD - AN ONGOING PROBLEM.**

As the FPSC Petition clearly documents, pay-per-call fraud continues in spite of Congressional action, rulemaking efforts by the Commission and the Federal Trade Commission, as well as state and federal enforcement actions. In 1991, the Commission first established pay-per-call rules to attempt to protect telephone subscribers from abusive practices associated with such services.<sup>1</sup> However, fraudulent practices persisted. In response, Congress enacted the Telephone Disclosure and Dispute Resolution Act ("TDDRA") in 1992 to curb deceptive trade practices while fostering the growth of the legitimate pay-per-call industry.<sup>2</sup> In TDDRA, Congress authorized and directed the Federal Trade Commission and this Commission to design rules to prevent abusive practices.<sup>3</sup> Unfortunately, unscrupulous operators still evade these rules and impose exorbitant charges on consumers' phone bills.

## **THE TELECOMMUNICATIONS ACT REQUIRES FURTHER ACTION.**

After the FPSC's Petition was filed, Congress authorized additional measures to stop these abusive practices. In Section 701(a)(1) of the Telecommunications Act of 1996,<sup>4</sup> Congress strengthened TDDRA to provide additional protection against information providers' use of 800 numbers and tariffing pay-per-call services to connect individuals to pay-for-call services without complying with existing rules. In order to accomplish these objectives, Congress revised

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<sup>1</sup> Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 61166 (1991), recon., 8 FCC Rcd 2343 (1993).

<sup>2</sup> 47 U.S.C. § 228.

<sup>3</sup> Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Report and Order, 9 FCC Rcd 2475 (1993); 47 C.F.R. § 64.1501, et seq.; § 308, Trade Reg. Rule pursuant to TDDRA, 16 C.F.R. § 308.1 et seq.

<sup>4</sup> Telecommunications Act of 1996, § 701(a)(1), Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 151 et seq.).

TDDRA's restrictions related to charges for pay-per-calls that use 800 numbers and modified the definition of pay-per-call services.<sup>5</sup> Furthermore, the Act expressly required the Commission to revise existing rules to implement these changes and authorized the Commission to extend the definition of pay-per-call services to other services subject to similar unfair and deceptive practices.<sup>6</sup>

The Conference Committee Report states that the measure was intended to "close a loophole in current law, which permits information providers to evade the restrictions of . . . [TDDRA] by filing tariffs for the provision of information services."<sup>7</sup> The Report emphasizes Congressional intent that pay-per-call charges appear on a phone bill only if a customer knowingly ordered such services.

This recent Congressional action is consistent with well established consumer protection principles that consumers are not obligated to pay for unordered goods or services. Even where the recipient has an ongoing commercial relationship with a business, a consumer may reject unordered goods and avoid any obligation to pay.<sup>8</sup> Both Federal and State law provide that a recipient of unsolicited merchandise is entitled to retain the merchandise as if it were gift.<sup>9</sup>

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<sup>5</sup> Section 701(a)(1).

<sup>6</sup> Section 701(a)(2) and (b).

<sup>7</sup> H. Conf. Rpt. No. 104-458, p. 203, 104th Cong., 2d Sess. (1996).

<sup>8</sup> For example, the Federal Trade Commission negative option rule contains such provisions. See 16 CFR § 425.1 et seq.

<sup>9</sup> Mailing unordered merchandise is a violation of the Federal Trade Commission Act under 39 U.S.C. § 3009. State law appears uniform on this point. See Ark. Code Ann. § 4-86-103; Cal.Civ. Code § 1584.5; Conn. Gen. Stat. § 42-126b; Fla. Stat. § 570.545; 815 ILC § 430/1 (Illinois); Minn. Stat. § 325G.01; Mo. Rev. Stat. § 407.200; N.Y. Gen. Bus. Law § 396; Ohio Rev. Code Ann. § 1333.60; 73 P.S. 2001. New York and California law create a right of action in favor of persons who receive bills for unsolicited merchandise.

## **FPSC PROPOSAL MERITS CONSIDERATION.**

The Attorneys General believe that the FPSC proposal raises important concerns about correcting pay-per-call abuses. The regulations that Congress has directed the Commission to promulgate within 180 days of the effective date of the 1996 Telecommunications Act may provide an effective and efficient means to address FPSC's proposal that local exchange companies offer subscribers optional pay-per-call billing blocks. The proposal would offer added protection against fraudulent charges and is premised on the concept that consumers may only be billed for services that they affirmatively agreed to purchase - - a basic principle of the American marketplace.

In considering this proposal and the formulation of other rules to implement the Telecommunications Act of 1996, it is critical that existing consumer protection provisions be maintained and strengthened. Fair and effective dispute resolution procedures for consumer complaints must be available and easily accessible. The implicit or explicit threat of disconnection of essential local phone service as a device to collect disputed, unordered or unauthorized charges unrelated to local service must be stopped.

## **CONCLUSION**

The Attorneys General urge the Commission to explore the FPSC's proposal as an additional remedy that would promote greater compliance with existing pay-per-call rules and provide further protection to consumers. The proposal is consistent with traditional, legal and equitable principles and would give effect to recent expression of Congressional intent.

We appreciate that the Telecommunications Act of 1996 imposes significant obligations upon the Commission to implement the comprehensive deregulation of the telecommunications

industry. Instead of pursuing the FPSC's proposal in a separate proceeding, the Commission should consider including this proposal with rulemaking proceedings dealing with pay-per-call services required by the Telecommunications Act of 1996.

Respectfully submitted,



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RICHARD BLUMENTHAL  
Attorney General  
State of Connecticut  
Chairperson  
Telecommunications Subcommittee  
Consumer Protection Committee  
National Association of Attorneys General

The following Attorneys General join in these comments:

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